

**IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JODHPUR**

ORDER

Ramzan Khan & Ors. Vs. State of Raj., & Ors.

**S. B. CIVIL WRIT PETITION NO.483/1996
UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA**

Date of Order : 8th August, 2007.

PRESENT

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr.MS Singhvi, for the petitioners.
Mr.SN Tiwari, Dy.GA, for the respondent- State.
Mr.NM Lodha, for the respondents nos. 2 to 4.

BY THE COURT:

Heard learned counsel for the parties.

The petitioners are aggrieved against one order passed by the respondent – State dated 23.1.1996, hence, preferred this writ petition.

All the six petitioners are employee of the Municipal Board, Chittorgarh. They obtained allotment of plots from Municipal Board, Chittorgarh by submitting affidavit that they are not holding or own any plot. The plots were allotted to the petitioners in the year 1980. The petitioners thereafter, constructed their houses on the plots in question. According to the petitioners after about six years a frivolous complaint was filed against the petitioners in the court under Section 420, 467 and 477 IPC, which was sent to the concerned Police Station under Section 156(3) Cr.P.C. Allegation in the complaint was that the petitioners got the plots by submitting wrong facts and affidavits. In the said complaint, the Police submitted FR after investigating the matter. Copy of the FR has been placed by the petitioner on record as Annex.2. After 16 years from allotment of plots to petitioners and after 10 years from filing of FR, the State Government vide order dated 23.1.1996 held that petitioners are prima facie guilty of submitting false affidavit and got the plots in the year 1980 by mis-representation. The State Government vide order dated 23.1.1996 directed the Executive Officer of the

Municipal Board, Chittorgarh to initiate proceedings under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as the CCA Rules of 1958) on account of submitting false affidavit and to take action against these petitioners under the provisions of the Indian Penal Code as well as under the Oath Act. It was further recommended that the plots, which were allotted to the petitioners, the proceedings for cancellation be initiated and proceedings may be registered before the Estate Officer for taking possession of the houses of the petitioners.

The contention of the petitioners are that the plots were allotted to the petitioner in the year 1980. A frivolous complaint was submitted in the court after six years from the date of allotment of the plots. In said complaint, after investigation, FR was submitted by the Police in the court. After 16 years from the date of allotment, the State has decided to initiated disciplinary proceedings against the petitioners. Thereafter, on the ground of delay alone, the order of the State Government dated 23.1.1996 taking a decision to initiate proceedings under Rule 16 of the CCA

Rules of 1958 deserves to be quashed. It is also submitted that the petitioners already raised construction of their houses and they submitted their affidavits before allotment of plots to them and clearly stated that they were not possessing any plot and they obtained the plots from the Municipal Board by disclosing true and correct facts. The petitioners also constructed houses and by now 27 years have passed. The State's direction to initiate proceedings for cancellation of allotment of plots after 16 years cannot be sustained nor the Municipal Board can initiate proceedings of taking possession of the houses. It appears from the order dated 23.1.1996 that directions to take all actions simultaneously have been issued. It is submitted that unless the petitioners are found guilty in departmental inquiry, the other actions cannot be taken. Unless Pattas are cancelled by lawful order, the possession of the property cannot be taken straightway. Therefore, all the three directions issued by the State Government are depending upon only the conduct of the petitioners for which the State wants to initiate departmental proceedings after 16 years of the time of alleged misconduct of the

petitioners.

Learned counsel for the petitioners submitted that in pursuance of the directions of this Court dated 19th Nov., 2005 petitioner Prem Singh, Ramzan Khan, Chandmal and Rajmohan submitted their affidavits stating therein that they were not holding any plot at the relevant time. One of the petitioner no.4 Ahmed Khan has died and petitioner no.1 Ramzan Khan has taken voluntary retirement and petitioner no.5 Chandmal retired. In addition to the above, the learned counsel for the petitioners submitted that the order passed by the State Government dated 23.1.1996 was passed without affording any opportunity of hearing to the petitioners and from the order dated 23.1.1996 it is clear that the State Government has already declared the petitioners guilty and, therefore, directed the Municipal Board to initiated proceedings for cancellation of allotment of plots and for taking possession of the plots by initiating proceedings under the provisions of the Unauthorized Occupants Act, 1964. Therefore, on this count of not affording opportunity of hearing to the petitioner before passing of the order dated 23.1.1996, the order deserves to

be quashed.

Learned counsel for the respondents vehemently submitted that the no proceeding has been initiated in pursuance of the order dated 23.1.1996 and, therefore, the writ petition is pre-mature. It is also submitted that the inquiry was conducted in the matter and the Asstt. Director, (Vigilance), Local Self Government after carefully examining the report submitted by the District Collector directed the respondent Municipal Board to cancel the allotment of plots made in favour of all the petitioners and to initiate proceedings. It is submitted that the petitioners will get opportunity to put-forward their contention before the inquiry officer and in the proceedings where the relief of cancellation of allotment to be sought from the Municipal Board. It is also submitted that all the petitioners obtained plots from the Municipal Board, Chittorgarh by submitting false affidavits.

I considered the submissions of learned counsel for the parties and perused the record of the case as well as affidavits submitted by the petitioners referred above.

So far as order dated 23.1.1996 (Annex.3) is

concerned, admittedly the same has been passed by the State Government after 16 years from the time of issuance of allotment letters to the petitioners as well as from the time of handing over the possession of the plots to the petitioners. By this order dated 23.1.1996, the State Government directed the Municipal Board to initiate proceeding under Rule 16 of the Rules of 1958. The said part of the order deserves to be quashed only on the ground that no departmental proceedings can be initiated after 16 years on any misconduct committed by the employee when the fact of alleged misconduct was in the knowledge of the employer. The other direction issued for cancellation of allotment order, that too, when possession was handed over to the petitioners and they raised the construction and in the criminal case, the findings have been recorded in favour of the petitioners, there appears to be no justification for cancellation of allotment of the plots as by the time when the order dated 23.1.1996 was passed, the petitioners must have already incurred huge expenditure when there was no proceeding against them pending and by now 27 years have passed.

In view of the above facts, the order dated 23.1.1996 which was passed without affording opportunity of hearing to the petitioner deserves to be quashed.

Hence, the writ petition of the petitioners is allowed and the order dated 23.1.1996 (Annex.3) is quashed and set aside.

(PRAKASH TATIA), J.

c.p.goyal/-